

THE CHAIRMAN: The pages will distribute Amendment J.

This will be Amendment No. 3.

The Clerk will read the amendment.

READING CLERK: Amendment No. 3 to Committee Recommendation No. GP-13 by Delegates Johnson and Rybczynski:

On page 2, section 3, Delayed Effect of Certain Sections, strike out all of subsection (c), comprising all of lines 46, 47 and 48.

THE CHAIRMAN: The amendment is submitted by Delegate Johnson, seconded by Delegate Rybczynski.

The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman, ladies and gentlemen, I shall be very brief. All of the reasons for striking section A and all the reasons for not striking section A are applicable, with one very important difference. In particular, in section A we were talking about property damage. We were talking about alleged damages as a result of taking of property.

The reason that we, in spite of the last vote, submitted this section is because there is quite a difference between the two sections. In sovereign immunity we are talking, for all practical purposes, about tort claims, injuries.

This Constitutional Convention saw fit, and properly so, to put a provision in the constitution which affected the State's right to plead sovereign immunity. I think that was a very, very good step forward, but to delay this for one year and a half, which although it gives the legislature an opportunity to set guidelines, what about the injuries and damages?

We are talking about human life and limbs now, ladies and gentlemen, and I do not mean to become dramatic about this. I am not trying to frighten my votes, but I am concerned about the very practical application to this section.

It seems totally improper and totally unfair to me to create a right and to delay for a year and a half, which will cause and create suffering by individuals, that they probably will not recover, because the State in that year and a half will be able to plead sovereign immunity.

I do not want to take part in a proceeding which, while purporting to give rights to all the citizens of the State, is going to delay the right for a year and a half, just

to give the legislature a little more time to define the right. I submit that the legislature will define the right as of July 1, 1968.

I do not want to take part in seeing injury and damages caused to children, to adults, and then have to explain to them that if that injury or damage would have occurred after January 1, 1970, they would have been entitled to recovery, but because their injury or damage occurred between July 1, 1968, and January 1, 1970, they are not entitled to the recovery because the State can plead sovereign immunity.

Citizens of this State have waited well over a hundred years for a section of this nature and to delay another year and a half, after providing for it in the constitution, is a serious mistake.

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, ladies and gentlemen of the Committee, I rise to urge that you defeat this amendment and I must give you some of the background.

The Committee on Personal Rights and Preamble debated this question long and hard. We discussed it at great length from the point of view that this was a very new and serious step in the State of Maryland.

I think we pointed out to this Committee of the Whole that this has been accomplished in three ways in this country: (1), it has been done by constitutional conventions, with some kind of limitations, in order to permit the State to get prepared for it; (2), in a few States it was done by court decisions, in specific areas; and (3), it has been done by the legislature in other states.

Now, this is not just a tort action concept that Delegate Johnson is bringing forth to you. It goes much further than that. It involves contractual matters in which the State is involved. It involves suits against the State Roads Department for contractual matters, it involves every kind of conceivable action.

When the Committee debated this thing, there was considerable doubt as to whether this matter should be put in the constitution at all. When it was decided to put it in, there was no question in everybody's mind that there must be a reasonable opportunity for the legislature to define the scope of liability by way of making whatever saving it wanted to. I know of no state where there is a complete and abso-